IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

IN RE EAGLES CREST LEASING GROUP 1, LLC, Debtor.	Bankruptcy No. 10-06103-11 **AMENDED LIMITED OBJECTION OF BANK OF THE WEST TO DEBTOR'S PLAN OF REORGANIZATION**

COMES NOW, Bank of the West (hereinafter referred to as the **"Lender"**) as secured Creditor of the above named Debtor, by and through its attorney Thomas H. Burke, of the Law Firm of Whitfield & Eddy, P.L.C., 317 - 6th Avenue, Suite 1200, Des Moines, Iowa, 50309-4195, and in support of Bank of the West's Limited Objection to Debtor's Plan of Reorganization, respectfully states to the Court the following:

JURISDICTION

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 157, and § 1334, and 11 U.S.C. §§ 1122, 1126 and 1129 and FRBP 3018 and 3022. The Debtor, Eagle Crest Leasing Group 1, LLC, ("**Debtor**") filed its bankruptcy petition seeking relief under Chapter 11 of the United States Bankruptcy Code on December 27, 2010.

2. The Debtor filed its Plan of Reorganization on or about June 24, 2011 (hereinafter referred to as the "**Plan"**).

LENDER'S CLAIM

3. Lender has filed a Proof of Claim in the sum of $12,044,733.79 on or about April 18, 2011.

4. Lender has a first priority Mortgage and Assignment of Leases of Rents as against certain real estate owned by the Debtor in Scott County, Iowa.

OBJECTIONS TO CONFIRMATION

5. Counsel for the Debtor and counsel for the Lender have been negotiating multiple changes, additions and revision to the Debtor's Plan. As of the filing of this Limited Objection of Bank of the West to Debtor's Plan of Reorganization it appears that the parties are very close to reaching a consensual plan. However, certain details remain to be negotiated and/or refined in drafted language for proposes of a final, and agreeable (to Lender) Plan.

6. Lender has asserted the following objections and has proposed additional terms, conditions and provisions to those portions of the Debtor's Plan:

A. **Term of Repayment.** Debtor has proposed a Repayment Term on the "Modified Promissory Note" (as defined within the Debtor's Plan) of 15 years. Lender would suggest that a five year term is more consistent with current market standards for real estate properties of a similar type and status as the asset of Debor.

B. **Interest Rate**. Debtor has asserted an Interest Rate of 4.25% per annum on a fixed rate basis. Lender has requested and believes that a rate of 4.54% is more market for the risk involved by Lender.

C. **Attorney's Fees & Attorney Fee Note**. Debtor has proposed the alternative of either capitalizing all post petition attorney's fees and costs, if approved by the Court pursuant to 11 U.S.C. Section 506 or a separate "Attorney's Fees and Costs Note". Lender would object to the same and would urge that post petition attorney's fees and costs be capitalized and added to the outstanding principal balance of the Modified Promissory Note.

D. **Monetary Events of Default and Cure Requirements.** The Debtor has

proposed in its treatment of the claim of Lender certain requirements in the event of a "Monetary Default" as defined in Debtor's Plan. Lender would propose that the number of events of default that have the right to receive a cure notice be limited over the term of the Plan and that the notice be for a specified time period.

E. **Non-Monetary Events of Default and Cure Notice Requirements.** Debtor has proposed certain Non-Monetary Defaults as defined within the Debtor's Plan and the cure period and/or requirements of the same. Lender has proposed additional and alternative language to Debtor which the parties believe is acceptable and has been agreed upon.

F. **Post Cure Procedures and Remedies.** Lender has proposed the escrowing of a confession of judgment and a deed to the real estate in question which may come out of escrow upon the event of any uncured monetary or non-monetary event of default. Lender believes that the proposed language suggested by Lender is accepted to Debtor.

G. **Tax Escrow Account.** Lender has proposed the requirement for a tax escrow account into which $1/12^{th}$ of the annual real estate taxes for the real estate in question shall be deposited, with said tax escrow account located with Lender with said tax escrow agreements to be made monthly no later that the 25^{th} day of each month. Lender believes that the parties are in agreement on the language as to said provision.

H. **Monthly Reporting Requirements.** Lender has requested certain monthly reporting requirements and objected to paragraph 3 (P) set forth on page 33 of the Debtor's Plan. Lender and Debtor believe that any agreement has been reached on the informational requirements of the monthly reporting for the benefit of Lender.

7. Lender reserves full briefing on previously cited and remaining legal issues until after submission of any and all evidence, if necessary, at any final confirmation hearing.

WHEREFORE, Lender, Bank of the West, prays that the Court enter an order denying confirmation of the Debtor's Plan as submitted and dismissing the Debtor's Chapter 11 case or, alternatively, approving the terms, provisions, conditions, stipulations and modifications to the Debtor's Plan as requested and required by Lender along with such other and further relief as the Court may deem just and equitable under the premises.

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By: ***/s/ Thomas H. Burke***
Thomas H. Burke IS9998754
ATTORNEYS FOR LENDER, BANK OF THE WEST, SUCCESSOR BY MERGER TO COMMERCIAL FEDERAL BANK

ORIGINAL FILED WITH COURT

Copy of Objection of Bank of the West to Debtor's Plan of Reorganization served electronically upon:

Office of the U.S. Trustee
210 Walnut Street, Room 793
Des Moines, IA 50309-2108

Jeffrey Goetz
Bradshaw, Fowler, Proctor & Fairgrave, P.C.
801 Grand Avenue, Suite 3700
Des Moines, IA 50309-8004

ATTORNEY FOR DEBTOR EAGLE'S CREST LEASING GROUP 1, LLC

PROOF OF SERVICE

The foregoing instrument was served upon all parties listed herein either by electronic mail as shown by the Notice of Electronic Filing through the CM/ECF system or by depositing a copy thereof to each of the parties not served via electronic mail in the U.S. Mail, postage prepaid, in envelopes addressed to each of the parties at their respective

addresses on July 25, 2011. The undersigned declares under penalty of perjury that the foregoing is true and correct.

/s/ *Gina M. Winne*